No. 89-190

In The

Supreme Court of the United States

October Term, 1989

AMERICAN TRANSIT CORP., et al.,

Petitioner,

vs.

RENE APONTE CARATINI,

Respondent.

On Petition for Writ of Certiorari to The Supreme Court of Puerto Rico

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a substantial federal question of due process is presented by a case in which summary judgment is entered on the basis of evidence which was not objected to by the opposing party and on a theory which was adequately alleged and addressed by the parties in the case.

2. Whether the absence of an appeal as a matter of right in the Commonwealth of Puerto Rico court system presents a substantial federal question which merits the granting of certiorari.

3. Whether the issuance of a writ of certiorari is appropriate with regard to issues alleging federal constitutional violations which were not presented to the Courts of the Commonwealth of Puerto Rico.

STATEMENT OF PARTIES

The defendant-appellants in the case below were the American Transit Corp., a Missouri corporation; Empire Life Insurance Company, a Delaware corporation; Posadas de Puerto Rico Associates, a Texas partnership; and Milton Koffman and Barbar Koffman citizens of the State of New York and the United States.

Enrique Campos del Toro, now deceased, a citizen of the United States and the Commonwealth of Puerto Rico, was the plaintiff in the cases addressed in the Petition, but did not participate at the level of the Supreme Court of Puerto Rico. He is neither Petitioner nor Respondent in this case.

The compañia de Fomento de Turismo de Puerto Rico, a public corporation of the Commonwealth of Puerto Rico, although a defendant in the initial stages of the case, did not join in the filing of this Petition.

The plaintiff-appellee is René Aponte Caratini, a citizen of the United States and the Commonwealth of Puerto Rico. He is the Respondent herein.

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE COURT:

The Respondent, René Aponte Caratini, represented by his attorneys, respectfully prays that this Court deny the Petition to Review the Judgment of the Supreme Court of Puerto Rico in this case.

OPINION BELOW

The Resolution, Findings of Fact, Conclusions of Law, and Judgment, issued by the Superior Court of Puerto

Rico, San Juan Part on June 30, 1988, is included as Appendix E to the Petition.

The defendants-appellants, Petitioners herein, requested discretionary review of the Superior Court Judgment, which review was denied in an unreported Resolution of the Puerto Rico Supreme Court dated February 23, 1989, included as Appendix A to the Petition. Two later Motions for Reconsideration were likewise denied by the Puerto Rico Supreme Court, and are included as Appendices B and C of the Appendix, dated March 31, 1989 and May 3, 1989 respectively.

JURISDICTION

The Jurisdiction of this Court has been invoked pursuant to 28 U.S.C. sec. 1258(3). The Respondent agrees that there is jurisdiction in this Court to review the final judgment of the Supreme Court of Puerto Rico.[1]

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[1] The Petitioners have invoked the "final judgment or decree" jurisdictional requisite, yet inexplicably claim that the June 30, 1988 Superior Court order is not "final" and that they can still obtain discretionary review of that order in subsequent proceedings in the Superior Court and Supreme Court of Puerto Rico. (See, page 11 of the Petition.) Petitioners cite *Board of Education v. Superior Court*, 448 U.S 1343 (1980) (Rehnquist, J., in chambers); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) and *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975) for the proposition that this Court nonetheless has the power to review the decision of the Supreme Court of Puerto

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STATEMENT OF THE CASE

The case at bar concerns a number of transactions related to the purchase of a hotel in the Condado sector of San Juan, Puerto Rico, which gave rise to three separate lawsuits initiated in the Superior Court of Puerto Rico, San Juan Par.

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Rico. (See, Petition, p. 11-12). They further assert that this Court may treat the Petition as a petition for writ of mandamus. (See, Petition, p. 12, n.3).

The arguments presented by the Petitioners in support of these propositions are without merit. In the event that the judgment were not final, none of the recognized exceptions would authorize review in this Court at this time. See, *Cox Broadcasting Corp. v. Cohn*, supra. Respondent maintains, however, that the Superior Court order is clearly a "final" one under the law of Puerto Rico, with respect to the claims set forth in paragraphs 2(a) and (b) of the Superior Court "Ruling and Judgment" (See, Appendix E of the Petition, at page 42). *Cortés Román v. Commonwealth of Puerto Rico et al*, 106 D.P.R. 504 (1977), 1977 Official Translations, 712. Under Rule 43.5 of the Puerto Rico Rules of Civil Procedure, P.R. Laws Ann. tit. 32, App. III Rule 43.5, Puerto Rico courts have the power "to enter final judgments deciding one or more claims in multiple claim suits if the court expressly concludes that there is no reason to postpone the judgment on said claims until the whole suit is settled, and provided that there it is expressly ordered that judgment be entered.". This is exactly what was done in the case at bar. A non-final "partial judgment" was rendered by the Superior Court only with respect to the contract claim set forth in paragraph 2(c) of the Ruling and Judgment.

By virtue of the existence of a "final judgment", rather than for the reasons set forth by the Petitioners, the Respondent agrees that the jurisdiction of this Court has been properly invoked.

In a 1972 foreclosure sale, Respondent René Aponte Caratini[2] was awarded a bid to purchase the hotel, providing an initial deposit of $500,000.00 with the U.S. District Court in San Juan, and paying a remaining $7,000,000.00 on January 5, 1973. The $7,000,000.00 was obtained through a loan secured by a mortgage in the name of Empire Life Insurance Company ("Empire Life")[3], a Petitioner herein. A first mortgage on the hotel was to be held by Empire Life. A second mortgage in the amount of $500,000.00, representing the initial bid deposit made by Respondent Aponte Caratini in the 1972 foreclosure sale, was assigned to Enrique Campos del Toro. (hereinafter "Campos del Toro").

On the same date, the Respondent sold the hotel to Milton and Barbara Koffman and to American Transit Corporation ("ATC"), also Petitioners herein. The buyers retained $7,000,000.00 of the purchase price expressly to provide for payment of the Empire Life mortgage. The Koffmans and ATC also issued a promissory note (secured by a third mortgage) to Respondent Aponte Caratini in the amount of $1,500,000.00, in recognition of various investments made by the Respondent. Several months later, the same parties signed a third promissory note for $500,000.00, secured by yet another mortgage, in exchange for an advancement of cash by Respondent

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[2] Through his wholly owned corporation, San Jerónimo Hotel Corporation.

[3] Empire Life Insurance Company is part of the Koffman Group. See, Appendix E, at App. 10 (Findings of Fact of the Superior Court of Puerto Rico, San Juan Part).

Aponte Caratini. All of the mentioned mortgages contained an agreement limiting personal liability of the debtors to the mortgaged real property.

Also in January of 1973, a "Memorandum of Understanding" was executed among the parties, providing *inter alia* that ATC would operate the hotel and have an option to purchase the hotel within 2 and 1/2 years, until June of 1975. In the event that ATC did not exercise the option, the Respondent René Aponte Caratini would have six months to exercise an option to purchase in the amount of $7,040,000.00 plus the value of capital improvements made by ATC, and an additional six months in which to close.

ATC, through a subsidiary, operated the hotel for shortly over two years. In April of 1975, ATC informed the Respondent that it was not going to exercise the option provided for in the Memorandum of Understanding. ATC further informed the Respondent that he had until December 31, 1975, to exercise his option under the aforementioned Memorandum.

In early June of 1975, W. Stanley Walch ("Walch"),[4] representing ATC, and Burton Koffman sent a letter to the Respondent offering to sell him the hotel for $7,000,000.00. The letter, representing an offer to modify the pre-existing purchase option, asked the Respondent to respond no later than June 30, 1975. The Respondent accepted the offer on that date.

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[4] Counsel of Record for the Petitioners in this Petition.

Petitioners ATC and Koffman, nonetheless, sent a subsequent communication to the Respondent, substantially modifying the conditions which had been previously agreed to. It became apparent that Petitioners had no intention of honoring the contract made. A period of time ensued, in which Respondent René Aponte Caratini attempted to secure a date for closing in accordance with the terms of the offer which he had accepted. During this period of time, however, the Petitioners were negotiating with a third party.

On August 1, 1975, all of the Petitioners executed a Purchase of Notes Agreement. Shortly thereafter, Petitioners ATC, Posadas de Puerto Rico Associates and the Koffmans signed a Shareholders Agreement. The Shareholders Agreement on its face established that if the Respondent did not reach an agreement with the mentioned Petitioners, the Koffmans would promptly cause Petitioner Empire Life to proceed with the foreclosure of its first mortgage on the hotel.

On November 3, 1975, Walch sent a letter to Campos del Toro, in which he attempted to convince Campos del Toro to foreclose his second mortgage. Campos del Toro, advised by his attorney that this could be construed as collusion, refused the offer. Both the Shareholders Agreement and the letter from Walch clearly had the purpose of depriving Respondent of his rights under the promissory notes, mortgage agreements and the 1973 Memorandum of Understanding.

Two months later, on January 7, 1976, Petitioner Empire Life (part of the Koffman Group) instituted the foreclosure proceedings against the Koffmans and ATC,

also Petitioners herein, alleging payment defaults by the three Petitioners (Case No. 76-67). On the very next day, both the Koffmans and ATC consented to the foreclosure, as had been previously agreed to in the Shareholders Agreement.

Both the Respondent and Campos del Toro moved to intervene in the foreclosure action (Case No. 76-67). The Respondent captioned his intervention complaint as follows: "Complaint regarding Legal Non-Existence of Procedure, Conspiracy, Confabulation and Fraud". The foreclosure action, however, ended without a satisfactory conclusion for Respondent Aponte Caratini. Campos del Toro subsequently reached a settlement with the Petitioners, ending his participation. When the parties requested a voluntary dismissal of the action, the Respondent objected to the extinction of his claim regarding fraud and related matters. The issue reached the Supreme Court of Puerto Rico, which agreed to the termination of Case No. 76-67, only and explicitly because these issues were going to be elucidated in a pending lawsuit which was then being heard in the Superior Court (Case No. 77-6840, the Superior Court case which eventually gave rise to the instant Petition.)

In 1977, before the actual foreclosure, both the Respondent and Campos del Toro had initiated the lawsuits which gave rise to this Petition (Cases Nos. 77-712 and 77-6840 respectively). In the case filed by Campos del Toro, Respondent Aponte Caratini, named as a defendant in that action, filed a cross claim against the other defendants, Petitioners herein. This cross claim clearly set forth the allegations of fraud against these parties.[5] These two

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[5] The Appendix to the Petition does not include this cross claim.

actions were consolidated in the Superior Court, which in a partial judgment, decided in favor of the Respondent. The Superior Court ordered the defendants, Petitioners herein, to pay an in personam judgment for $2,000,000.00 plus interest.

In 1982, the Puerto Rico Supreme Court, reviewed and reversed the aforementioned judgment. The decision of the highest court of Puerto Rico, *Campos del Toro v. American Transit Corp.*, 113 P.R. Dec. 337 (1982), was addressed exclusively to the validity under the Commonwealth Civil Code of the limited liability provision included in the Memorandum of Understanding. The Consequence of that decision, therefore, was limited strictly to the question of whether the Petitioners could be held *personally* responsible for the value of the mortgage notes.

The case continued with regard to outstanding matters including the claim of fraud. In May of 1987, the defendants, Petitioners herein, filed a 43-page Motion for Partial Summary Judgment, thereby initiating the summary judgment process. In response, the plaintiff, Respondent herein, filed an extensive opposition, and further requested summary judgment in his behalf.[6]

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[6] The Petitioners have included a document which they describe as "Motion requesting Partial Summary Judgment", as Appendix H to their Petition. It is remarkable that the Petitioners have included only a small part of the actual document, which was entitled "Opposition to Motion requesting Partial Summary Judgment and Motion requesting Partial Summary Judgment." The Respondent's motion commenced with an 18-page opposition to the Petitioners' own Summary Judgment

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There was extensive evidence presented on the cross-motions for summary judgment. In addition to the documentary evidence, the Respondent submitted an affidavit, in which he clearly set forth the fraud allegation, asserting the "fraudulent proceeding of the foreclosure of the mortgage" as a "means to subvert all of René Aponte Caratini's rights" and the illegal deprivation of rights under the Memorandum of Understanding "through the fraudulent and illegal actions of American Transit Corporation, Milton Koffman, Barbara Koffman, Empire Life Insurance Company, Posadas de Puerto Rico, S.A., Inc., Posadas de Puerto Rico Associates, and the other co-defendants in this case." (See, Appendix to Petition, at page 69.)

The Superior Court scheduled a hearing on the cross motions for summary judgment, held on April 27, 1988, during which "both parties presented their respective positions at length before the Court" (See, Resolution, Findings of Fact, Conclusions of Law, and Judgment, App., p.9). The Court reviewed the extensive documentation, which was accepted as authentic by both parties.

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request which had been filed earlier. In the Petition for Certiorari, the Petitioners at no time mention the fact that it was they who initiated the Summary Judgment in the Superior Court. The Petitioner's Appendix also fails to include the extensive documentary evidence which was admitted with regard to the cross motions for summary judgment, including only the sworn statements of the Respondent and of Attorney Walch. (See, Appendix I and J.) The documentary evidence, in fact, numbered close to forty-five exhibits in the respective Motions for Summary Judgment, none of which is included in the Appendix submitted by the Petitioners.

Ibid., at 41. At no time at the hearing did the defendants (herein Petitioners) object to the fraud allegations or withdraw their own motion for summary judgment, based on the absence of any "genuine issue as to any material fact", P.R. Laws Ann. tit. 4 App. 36.3.

On June 30, 1988, the Superior Court issued its "Resolution, Findings of Fact, Conclusions of Law, and Judgment", included as Appendix E to the Petition. The Superior Court decision constitutes a final judgment as to the recovery of sums equivalent to the amount of the two mortgage notes mentioned in Paragraphs 2(a) and (b), at page 42 of the Appendix, due to the "fraudulent deprivation of Aponte's right to said sum(s)".

The defendants, Petitioners herein, thereafter filed a "Joint Request for Review and Petition for Certiorari" in the Supreme Court of Puerto Rico (hereinafter referred to as "Request for Review"). In the Request for Review, the defendants, Petitioners herein, conceded that "some determinations of the Judgment . . . are final and others are interlocutory" (translation provided.) The Request for Review set forth thirteen Points of Law, raising absolutely no constitutional issues meriting appeal as of right under the laws of Puerto Rico.[7]

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[7] Under the law of Puerto Rico, there are three mechanisms for reaching the Supreme Court. Criminal cases and cases which present substantial constitutional questions enjoy the right to appeal. All other writs are discretionary. From final judgments, a writ requesting review is used. Interlocutory orders can be brought before the Supreme Court through a writ of certiorari. P.R. Laws Ann. tit. 4, Sec. 37 (a), (b) and (c).

A Special Division of the Supreme Court, authorized under the laws of Puerto Rico, P.R. Laws Ann. tit. 4, Sec. 31, App. I-A Rule 3 (1983), was appointed to consider the defendants' Request for Review. On February 23, 1989, the Petition was denied.

Subsequently thereto, on two separate occasions, the defendants, Petitioners herein, filed for reconsideration before the Puerto Rico Supreme Court. In an 18-page Motion for Reconsideration dated March 14, 1989, these Petitioners for the first time raised any alleged constitutional issue, asserting that the Superior Court judgment was "confiscatory and in violation of the right to effective access to the courts" (translation provided). The issue to be resolved in reconsideration, moreover, was framed principally in terms of the extensive conflicts in the evidence itself, which the Petitioners asserted made it inappropriate for the Superior Court to decide the case on summary judgment.[8]

The second Motion for Reconsideration was filed on or about April 7, 1989. It was in this Motion that the Petitioners for the first time raised the argument that the judgment of the Superior Court was "not final, but rather

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[8] In a Motion requesting the Participation of all Members of the Court, filed jointly with Motion for Reconsideration, the defendants, Petitioners herein, asserted that "(o)ur contention is that the commercial conflict must be clarified and understood prior to resolving the legal conflict, and it is not susceptible to summary treatment, unless injustice and judicial error are to be sanctioned. There are serious conflicts in the evidence, as pointed out in our Motion for Reconsideration" (translation provided.)

interlocutory" (translation provided).[9] The Motion for Reconsideration also complained of the "manifest errors" in the Judgment, making reference to the allegedly unjust "finding of responsibilities neither alleged nor evidenced in the documents referred to and the ordering of the payment of sums on the basis of pure speculation and conjecture" and asserting that the judgment was "plagued with contradictions, inconsistencies and an absence of a realistic vision of how businesses such as the one at bar are carried our" (translations provided), hardly a federal constitutional claim.

The Supreme Court of Puerto Rico denied both Motions for Reconsideration. In the final Resolution, dated May 3, 1989, the Court ordered the defendants to "abide by the same". See, Appendix A to the Petition.

REASONS WHY THE WRIT SHOULD BE DENIED

I. The Petition Presents No Important Questions of Federal Law which Warrant the Issuance of the Writ, but Rather Addresses Mere Procedural Matters and Factual Disputes under the Law of the Commonwealth of Puerto Rico, Devoid of any Genuine Constitutional Dimension.

Petitioners have attempted to frame the questions raised in their petition in Constitutional terms, in order to provide the basis for the issuance of the writ of certiorari. The Petition, however, presents no substantial federal

[9] See, footnote 1 supra.

question, but rather addresses various procedural complaints and factual disputes arising under the law of the Commonwealth of Puerto Rico.

The arguments in the Petition can be reduced to three fundamental claims:

> (A) a claim that due process was violated by the entry of summary judgment imposing liability for a cause of action allegedly not pleaded or litigated in the trial court;
>
> (B) a claim that due process was violated by the entry of summary judgment on the basis of allegedly inadmissible evidence; and
>
> (C) a claim that the failure of the Commonwealth Court system to provide for appellate review as a matter of right violates due process.

The respondent will address each of the above claims separately.

A. The Issue of the Unpleaded Claim

In the Petition, it is asserted that the Superior Court of Puerto Rico decided an issue which had never been raised in the pleadings, the fraud claim. In making this argument, the Petitioners studiously avoid and ignore the factual and procedural background of the case at bar.

The fact of the matter is that the issue of fraud was adequately pleaded and presented no surprise whatsoever, to the defendants, Petitioners herein, at any time in the course of these proceedings. The fraud claim was in fact alleged, both in Case No. 77-6840, to which all Petitioners were parties, and in Case No. 76-67, to which

Petitioners Empire, the Koffmans and ATC were parties. When the Respondent objected to the potential extinction of his fraud claim in Case No. 76-67, moreover, the Puerto Rico Supreme Court refused to review the case, noting these issues were going to be fully elucidated in the Superior Court case then pending (Case No. 77-6840, which had been consolidated with Case No. 77-712).

In the summary judgment proceeding, furthermore, the fraud issue was amply discussed. It was addressed extensively in the affidavit filed by the Respondent in opposition to the Petitioners' Motion for Summary Judgment and in support of Respondent's Cross-Motion, in other documents filed with the cross-motions for summary judgment, and in several motions submitted by the parties.[10] Indeed, it was the very reason for the submission of the Shareholders Agreement in evidence for the purposes of summary judgment. It was also the subject of extensive oral argument during the April, 1988 hearing.

At no time did the defendants, Petitioners herein, object to the inclusion of this evidence in the summary

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[10] The Puerto Rico Rules of Civil Procedure provide for amendments to conform to the evidence. P.R. Laws Ann., tit. 32, App. III, R. 13.2. The Puerto Rico rule, virtually identical to F.R.C.P. Rule 15(b), provides that "(w)hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Regardless of the adequacy of Respondent's pleadings, therefore, the defendants, Petitioners herein, clearly consented to the fraud issue being brought before the Superior Court in the summary judgment proceedings. It was only after the decision of the Superior Court that they began to complain about this alleged procedural defect.

judgment proceeding. Nor did the defendants withdraw their own Motion for Summary Judgment in light of the evidence presented by the Respondent. Rather, the Petitioners participated fully in the summary judgment hearing, stipulating to the documentary evidence presented in support of the cross-motions, and maintaining their position that there was no genuine issue of material fact requiring a full hearing on the merits.[11]

Indeed, in their original Request for Review in the Supreme Court the Petitioners continued to assert that partial summary judgment should be granted in their favor. They raised absolutely no constitutional issues concerning the allegation that the Superior Court based its determination on an issue which they later asserted was not adequately pleaded.

The Petitioners' attempt to convert this issue concerning the fraud allegation into a matter of constitutional dimension is bound to failure. It is clearly erroneous as a factual matter, and moreover presents no issue whatsoever of federal constitutional law. The defendants were clearly provided with adequate notice of the claims being litigated, presented evidence with respect to those claims, and failed to object to the evidence presented by the plaintiff, Respondent herein, with respect thereto.

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[11] In their original Request for Review in the Supreme Court, the defendants for the first time claimed that there existed factual controversies which impeded the concession of summary judgment in favor of the respondent.

The Due Process Clause requires only that "an opportunity (be) granted at a meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) "for (a) hearing appropriate to the nature of the case," *Mullane v. Central Hanover Bank & Trust Co*, 339 U.S. 306, 313 (1950); *Boddie v. Connecticut*, 401 U.S. 371 (1971). These requirements were clearly complied with in the case at bar.

B. The Allegations Concerning Inadmissible Evidence

The second claim, concerning inadmissible evidence, likewise fails to present a substantial federal claim. The Petition clearly does not set forth an issue of Due Process with regard to this issue. Additionally, as with the previous issue, the Petitioners' argument largely ignores the actual facts and procedural background of this case.

Nowhere in their submission do the Petitioners specified which "inadmissible" evidence was actually considered by the Superior Court in reaching its judgment. The assertion that the statements in Respondent's affidavit were "conclusory in nature and not admissible in evidence" (Page 18 of the Petition) is clearly contrary to the record in this case. *See*, App. I to the Petition. Likewise untrue is the assertion that the Aponte Caratini "affidavit is almost entirely hearsay and devoid of any affirmative indication that Aponte was competent to testify as to the matters discussed therein." *Id.*

Petitioners' argument, moreover, fails to note that the aforementioned affidavit was just one piece of the extensive evidence presented to the Superior Court by all

parties to the summary judgment proceedings, including the Petitioners herein. Moreover, a perusal of the Superior Court decision clearly demonstrates that the trail judge did not base his decision on the affidavit in question. Indeed, the Superior Court decision addressed the fraud allegation without making reference to the affidavit, referring rather to the documentary evidence and in particular to the Shareholders Agreement in which the fraud is committed to paper. *See*, Conclusion of Law No. 6, at page 31-33 of the Appendix to the Petition.

The issue of "inadmissible evidence" also presents no Due Process dimension. The essence of the Petitioners' argument boils down to a complaint about a factual determination made by the trier of fact in a summary judgment proceeding to which they themselves had submitted. No federal constitutional issues are involved, and the issuance of the writ on this basis is clearly unwarranted.[12]

C. The Lack of an Appeal as a Matter of Right

The Petitioner's assertion that this case presents an issue of "general significance and importance: the extent

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[12] It is important to note that in civil cases in Puerto Rico, there are no juries. The Seventh Amendment concerns which might arise in Summary Judgment proceedings in federal court, amply discussed in recent case law, Eg. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) and the law journal article cited by the Petitioners, Friedenthal, "Cases on Summary Judgment: Has there been a Material Change in Standards?", 63 Notre Dame L. Rev. 770, 771-775 (1988), are of no importance in the case at bar.

to which the Due Process Clause is implicated in the civil appellate review process" is also without merit, albeit for different reasons. This issue has already been clearly decided by this Court, and the instant Petition adds nothing to the previous decisions of this Court.

As noted by the Petitioners, this Court decided long ago that "the right of appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance." *Ohio ex rel Bryant v. Akron Park District*, 281 U.S. 74, 80 (1930). Recently, this Court reiterated the long-standing rule that even criminal defendants have no due process right to appeal should a state not provide one. *Evitts v. Lucy*, 369 U.S. 387, 393 (1985) ("Almost a century ago, the Court held that the Constitution does not require States to grant appeals as of right to criminal defendants seeking to review alleged trial court errors.") See, generally, *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 18 (1986) (Brennan, J., Concurring in the Judgment).

In the case at bar, the defendants, Petitioners herein, amply exercised their right under Puerto Rico law to seek discretionary review of the Superior Court's judgment. P.R. Laws Ann. tit. 4, sec. 37. They filed an extensive Request for Review followed by two attempts to obtain reconsideration in the Puerto Rico Supreme Court.[13]

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[13] The Petitioners certainly had their day in court at the Superior Court level as well. They first filed a Motion for Partial Summary Judgment, which the Respondent opposed. The Petitioners then filed an opposition to the Respondent's cross-motion for partial summary judgment, to which the

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As noted above, there is simply no constitutional dimension to the complaints the defendants, Petitioners herein, assert regarding the summary judgment procedure used in this case. Therefore, there was no need whatsoever for the Puerto Rico courts to provide any review, much less review as a matter of right. The defendants had their day in court, and they lost. The fact that the Puerto Rico court system failed to guarantee them a right of review presents no federal issue appropriate for resolution through a writ of certiorari.

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Respondent replied. The Petitioners then filed a further response to the Respondent's reply. After losing the partial summary judgment with regard to all but one issue, the Petitioners filed a Motion for Reconsideration, and yet a further Reply to Respondent's Opposition to the Motion for Reconsideration.

CONCLUSION

For all of the above reasons, the Petition for writ of certiorari should be denied. The Petition presents no issue which merits the granting of the writ.

Respectfully submitted,

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